TURKEY

TRADE SUMMARY

The U.S. goods trade balance with Turkey went from a trade deficit of $913 million in 2005 to a trade surplus of $366 million in 2006. U.S. goods exports in 2006 were $5.7 billion, up 34.2 percent from the previous year. Corresponding U.S. imports from Turkey were $5.4 billion, up 3.5 percent. Turkey is currently the 30th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Turkey in 2005 was $2.4 billion (latest data available), the same as in 2004. U.S. FDI in Turkey is concentrated largely in the banking, wholesale and manufacturing sectors.

IMPORT POLICIES

Tariffs and Quantitative Restrictions

Turkey applies the EU's common external customs tariff to third-country (including the United States) non-agricultural imports and imposes no duty on non-agricultural items from EU and European Free Trade Association (EFTA) countries.

Turkey maintains high tariff rates (25 percent average most-favored-nation rate) on many food and agricultural product imports. The Turkish government often increases tariffs on grains during the domestic harvest. High feed prices harm Turkish livestock industries, particularly for beef and poultry. Duties on fresh fruits range from 15.4 percent to 145.8 percent. Tariffs on processed fruit, fruit juice, and vegetables range between 19.5 percent and 130 percent. The Turkish government also levies high duties, excise taxes and other domestic charges on imported alcoholic beverages that increase wholesale prices by more than 200 percent.

Import Licenses and Other Restrictions

Import licenses are required for products that need after-sales service (e.g., photocopiers, advanced data processing equipment and diesel generators), distilled spirits and agricultural products. Lack of transparency in Turkey's import licensing system can result in costly delays, demurrage charges and other uncertainties that stifle trade for many agricultural products and for distilled spirits. In November 2005, the United States brought a dispute against Turkey in the World Trade Organization (WTO) arguing that, *inter alia*, Turkey's tariff-rate quota (TRQ) scheme, which contains an onerous domestic purchase requirement, and its refusal to issue import licenses outside the TRQ, are inconsistent with Turkey's WTO obligations. This case is proceeding through WTO dispute settlement.

In some cases, notably for meat and poultry (not to mention over-quota imports of rice), the Turkish government simply does not issue licenses, thereby creating a *de facto* ban on imports of these products. Turkey has not allowed livestock for slaughter or meat imports from any foreign country since 1996 and has not established any public health requirements for the entry of meat. Outbreaks of Bovine Spongiform Encephalopathy (BSE) and foot and mouth disease (FMD) in Europe strengthened Turkey's resolve to keep livestock and meat products out of its market. The United States is currently not able to export breeding livestock to Turkey since the EU placed the United States in the third BSE risk category. Turkey's BSE Committee has decided not to import any breeding cattle from category 3 countries (based on the EU system). The United States is also unable to export poultry meat for consumption within Turkey because the government of Turkey requires its officials to inspect and approve all foreign processing facilities and expects inspection costs to be covered by Turkish importers.

Due to the EU accession process, Turkey is in the process of rewriting its agriculture import regulations in order to harmonize them with the EU. Some new regulations, especially sanitary and phytosanitary measures and reference price systems, do not appear to be applied in an EU-consistent manner.

Despite liberalization of the spirits and tobacco markets, including a completed privatization of the state-owned alcoholic beverage company and plans to privatize the state-owned tobacco company, as well as privatization of imports of wine and alcoholic beverages, increases in consumption have been inhibited by inordinately high tariffs (85 percent - 100 percent) and special consumption taxes (275 percent), along with the value-added-tax (VAT). In 2006, legislation was introduced to reduce the number of control certificates required to import distilled spirits from two to one.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Turkish government has a poor track record of notifying WTO Members of proposed technical regulations and phytosanitary requirements, and implementation can appear to be arbitrary. Importers report increasing difficulty in obtaining information on sanitary and phytosanitary certifications. The Turkish government often requires laboratory testing on items not normally subject to testing by trading partners. U.S. imports could increase by an estimated $10 million to $25 million if these procedures were regularized.

U.S. companies have reported that products with the EU certificate of conformity (CE mark), particularly medical devices, have been detained by Turkish customs authorities for inspection. In some cases, U.S. products apparently have been subjected to additional tests, despite their CE marks. The Turkish government believes that it has addressed these complaints. For importation of distilled spirits, Customs requires that between 2 and 4 bottles per consignment be submitted for unspecified analysis, raising the cost of importing.

GOVERNMENT PROCUREMENT

Turkey is not a signatory to the WTO Agreement on Government Procurement; however, it is an observer to the WTO Committee on Government Procurement. Although Turkey’s laws require competitive bidding procedures for tenders, U.S. companies have complained that they can be lengthy and overly complicated.

Turkey's public tender law established an independent board to oversee public tenders. Foreign companies can participate in state tenders that are above an established threshold. The law provides a price preference of up to 15 percent for domestic bidders, which is not available if they form a joint venture with foreign bidders. Turkey has expanded the definition of domestic bidder to include foreign-owned corporate entities established under Turkish law.

Military procurement generally includes an offset requirement in the tender specifications. The offset guidelines were recently modified to encourage foreign direct investment and technology transfer.

EXPORT SUBSIDIES

Turkey employs a number of incentives to promote exports, although programs have been scaled back in recent years to comply with EU directives and WTO commitments. Historically, wheat and sugar have been Turkey's main subsidized commodities. Export subsidies, ranging from 10 percent to 20 percent of export values, are granted to 16 agricultural or processed agricultural products. In 2004, the Turkish Grain Board (TMO) sold domestic wheat at world prices (well below domestic prices) to Turkish flour and pasta manufacturers based upon their exports of flour and pasta. The Turkish Export-Import Bank provides exporters with credits, guarantees and insurance programs. Certain tax credits also are available to exporters.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Turkey's intellectual property rights regime has improved in recent years, but still contains serious problems. Turkey remained on the Special 301 "Priority Watch List" in 2006 due to concerns about the lack of protection for confidential test data submitted by pharmaceutical companies against unfair commercial use and continued high levels of piracy and counterfeiting of copyright and trademark materials. Turkey is a signatory to a number of international conventions, including the Stockholm Act of the Paris Convention, the Patent Cooperation Treaty and the Strasbourg Agreement.

Turkey's copyright law provides deterrent penalties for infringement. It does not, however, prohibit circumvention of technical protection measures, a key feature of the World Intellectual Property Organization (WIPO) "Internet" treaties. Generally, Turkish courts have not imposed deterrent penalties on pirates as provided in the copyright law but have instead applied the Turkish Cinema Law, which has much lower penalties. More recently, Turkish courts have issued increasingly severe sentences for copyright infringers, but significant backlogs in the courts slow redress. Recently enacted legislation contains several strong anti-piracy provisions, including a ban on street sales of all copyright products and authorization for law enforcement authorities to take action without a complaint by the rights holder. But the law also reduces potential prison sentences for piracy convictions.

In accordance with the 1995 patent law and a Turkish agreement with the EU, patent protection for pharmaceuticals began on January 1, 1999. Turkey has been accepting patent applications since 1996 in compliance with the TRIPS agreement "mailbox" provisions. The patent law does not, however, contain interim protection for pharmaceuticals in the research and development "pipeline."

Turkey's recently amended Patent Law provides for penalties for infringement of up to three years in prison, or approximately $32,000 in fines, or both, and closure of the business for up to one year. Research-based companies in the pharmaceuticals sector are concerned about provisions that delay the initiation of infringement suits until after the patent is approved and published, permit use of a patented invention to generate data needed for the marketing approval of generic pharmaceutical products and give judges wider discretion over penalties in infringement cases. Turkey does not currently have a system for patent linkage; the lack of such a system could create confusion and possibly allow generic pharmaceutical manufacturers to obtain marketing approval for a patent-infringing copy of a brand name drug.

The Ministry of Health introduced limited protection for undisclosed test data against unfair commercial use in a regulation issued in January 2005 and revised in June 2005. However, several of the regulation's provisions severely undermine protection for confidential test data. Data protection is limited to original products licensed in a European Union member country after January 1, 2001, for which no generic manufacturers had applied for licenses in Turkey as of January 1, 2005. The term of exclusivity is limited to the duration of the drug patent or to six years after the date of licensing in a European Customs Union country, implying a shorter term of protection because of the length of the marketing approval process in Turkey. Research-based companies estimate that, due to the prolonged regulatory review, on average the period of data protection is diminished by 20 percent to 25 percent.

Trademark holders also contend that there is widespread and often sophisticated counterfeiting of their marks in Turkey, especially in apparel, film, cosmetics, detergent and other products.

SERVICES BARRIERS

Telecommunications Services

In 2005, Turkey committed to end Turk Telecom's exclusive rights on phone telephony and other basic telecommunications services by 2006. It also made a commitment to provide immediate market access for data transmission services. In line with earlier commitments to WTO, Turkey opened its cellular mobile services and paging to competition.

In November 2005, 55 percent of the government-owned Turk Telecom was sold to a foreign investor. Turk Telecom still dominates the markets for value-added services, including Internet services. The Telecommunications Authority (TK), which reports to the Ministry of Transport, is slowly gaining experience and greater authority. Applicable licensing regulations are published on the Authority's website.

Other Services Barriers

There are restrictions on establishment in financial services, the petroleum sector, broadcasting and maritime transportation (see Investment Barriers section). Turkey restricts the ability of doctors, attorneys and other professionals to practice their professions. Legislation awaiting final approval by Parliament would permit foreign doctors to work in Turkey.

INVESTMENT BARRIERS

The United States-Turkey Bilateral Investment Treaty (BIT) entered into force in May 1990. Turkey has a liberal investment regime, but private investment has historically been hindered by excessive bureaucracy, political and macroeconomic uncertainty, a weak judicial system, high tax rates, a weak framework for corporate governance, and frequent changes in the legal and regulatory environment. Turkey has enjoyed several successive years of economic growth and stability which has contributed to a substantial increase in foreign direct investment. The corporate tax rate was reduced from 30 percent to 20 percent and new regulations were enacted that make it possible to establish a business in Turkey in one day. Turkish government policy is to encourage foreign direct investment.

Almost all areas open to investment by the Turkish private sector are fully open to foreign participation without screening or prior approval, although establishment in the financial and petroleum sectors requires special permission. Foreign equity ownership is limited to 25 percent in broadcasting and 49 percent in maritime transportation. Parliament is considering draft legislation easing restrictions on foreign ownership in the media sector. Once investors have committed to the Turkish market, they have sometimes found their investments undermined by legislative action, such as the imposition of production limits. One example of such limitations is the sugar law, which sets the price for domestically-produced sugar well above the world market price, limits the domestic production of fructose and, thus, creates a shortage of domestically-produced fructose. The law also sets a duty on imported fructose of 135 percent.

The Turkish government accepts binding international arbitration of investment disputes between foreign investors and the state. A recent law expanded the scope of international arbitration in contracts with the Turkish government. Investors continue to have concerns about the government's recognition and enforcement of arbitral awards against public entities, and at least one American company reports that the judicial system in Turkey has not recognized foreign arbitral awards. Turkey is a party to both the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the ICSID Convention.

Turkish law calls for a liberalized energy market in which private firms are able to develop projects with the approval of the Energy Market Regulatory Authority, an independent regulatory body. The state electricity utility has been unbundled into production, transmission, distribution and trading companies, but little progress has been made in privatizing power generation and distribution. The Privatization Agency announced a tender for three electricity distribution regions in late August 2006, however the privatization was postponed in January 2007 until after the November parliamentary elections. Liberalization in the natural gas sector has also faced delays. The state pipeline company, BOTAS, will remain dominant, but legislation requires a phased transfer of 80 percent of its gas purchase contracts.

As the result of a 1997 court decision, the Turkish government has blocked full repatriation of profits by oil companies under Article 116 of the 1954 Petroleum Law, which protected foreign investors from the impact of lira depreciation. Affected companies have challenged the 1997 decision. The judgments in almost all such lawsuits have been against the claimant companies. A new petroleum law that seeks to provide greater investment incentives and protections still awaits passage in the parliament.

OTHER BARRIERS

Corruption

Turkey has ratified the OECD antibribery convention and passed implementing legislation providing that makes bribes of foreign officials, as well as domestic officials illegal and not tax deductible. Corruption is perceived to be a major problem in Turkey by private enterprises and the public at large, particularly by government officials and politicians. The judicial system is also perceived to be susceptible to external influence and to be biased against outsiders to some degree.

Energy

In 2001, the Turkish government cancelled 46 contracted power projects based on the Build-Operate-Transfer (BOT) and transfer-of-operating-rights models. Turkey's constitutional court ruled in 2002 that the government would have to either honor the contracts or compensate the companies involved. One of those companies has launched an international arbitration case. In 2002, the government requested BOT projects already in operation, which include U.S.-owned companies and/or creditors, to apply for new licenses from the new Energy Market Regulatory Authority (EMRA). Negotiations between the Turkish government and the relevant companies concerning the request of the Turkish government to reduce the electricity sale tariffs are continuing while the license application process is still underway. Despite lack of action on new licenses, the Turkish government has continued to purchase electricity produced under the existing contracts.

Taxes

Taxation of all cola drinks (raised in 2002 to 47.5 percent under Turkey's "Special Consumption Tax") discourages investment by major U.S. cola producers. Turkey assesses a special consumption tax of 27 percent to 50 percent on all motor vehicles based on engine size, which has a disproportionate effect on U.S. automobiles.

Corporate Governance

A recent OECD report stated that Turkey's overall corporate governance outlook is positive because the authorities have already adopted, or are introducing, high quality corporate governance standards (including audit standards) and because transparency has improved significantly. The report cautions, however, that it is important for Turkey to improve further in the areas of control and disclosure of related party transactions and self-dealing, the protection of minority shareholders, and the role of the board in overseeing not only management but also controlling shareholders.

Pharmaceuticals

Besides their intellectual property concerns detailed above, the pharmaceutical industry's sales have been affected by government price controls. Research-based industry is also concerned about achieving transparent and equitable treatment in upcoming reforms of the government's health care and pension system.